No. 227

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In the Supreme Court Of the United States

OCTOBER TERM 1956

GREAT NORTHERN RAILWAY COMPANY, a corporation,

Petitioner,

vs.

LUMBER AND SAWMILL WORKERS, LOCAL UNION NO. 2409, a voluntary association and Labor Union, HELEN M. BOUCHEY, individually and as President of said Labor Union; DORIS M. TRAYNOR, individually and as Recording Secretary of said Labor Union; RAY F. LINDBERG, individually and as Financial Secretary of said Labor Union, LEONA L. STEIN and JOSEPH S. BOGARD,

Respondents.

Petition for Writ of Certiorari With Brief

EDWIN C. MATTHIAS,
HALLAN HUFFMAN,
NEWELL GOUGH, JR.,
of Counsel.

TAYLOR B. WEIR,
Attorneys for Petitioner.

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IN THE
SUPREME COURT
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UNITED STATES

GREAT NORTHERN RAILWAY COMPANY,
a corporation,

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LUMBER AND SAWMILL WORKERS, LOCAL UNION NO. 2409, a voluntary association and Labor Union, HELEN M. BOUCHEY, individually and as President of said Labor Union; DORIS M. TRAYNOR, individually and as Recording Secretary of said Labor Union; RAY F. LINDBERG, individually and as Financial Secretary of said Labor Union, LEONA L. STEIN and JOSEPH S. BOGARD,

Respondents.

PETITION FOR WRIT OF CERTIORARI WITH BRIEF

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The petition of Great Northern Railway Company, the above named petitioner respectfully shows:

JUDGMENT BELOW

This petition is directed against the judgment and opinion of the United States Court of Appeals for the Ninth Circuit, entered against this petitioner and in favor of respondents reported in 231

Fed. (2) and a copy of which opinion and judgment is set out at page III of appendix.

JURISDICTION

That said judgment was dated and entered April 18, 1956; and the Act of Congress of June 25, 1948, 62 Stat. 928 (28 USCA 1254) confers upon this Court jurisdiction to review said judgment.

QUESTION

The Petition here is directed at the judgment and decisions of the Courts below, sustaining defendants' and respondents' Motion in the District Court to dismiss the Complaint

> "on the ground that the Court lacks jurisdiction to issue the preliminary injunction prayed for because the action involves a labor dispute within the provisions of 29 U.S.C.A., Chapter 6, and 29 U.S.C.A., Section 52, and to dismiss the First Cause of Action because the First Cause of Action fails to state a claim against defendants upon which relief can be granted."

The Courts below have erroneously held that the Petitioner, Railway Company, has no right to injunctive relief against the Union pickets based solely upon grounds, either (a) to protect its property rights—the right to do business as a common carrier—as held in Dorchy v. Kansas (272 U.S. 306, 71 L. Ed. 248), or (b) to enable it to perform its duties as a common carrier, imposed by the Interstate Commerce Act (24 Stat. 382, 49 U.S.C.A. 8), and avoid the penalties imposed by that Act

for failure of the carrier to furnish the service to the public, including a struck plant.

That question is of vital importance to the commerce and welfare of the United States of America, and should be decided by this Court, in view of the fact that the decision here for review is contrary to the overwhelming number of decisions in the lower Federal Courts and Courts of last resort in three different States, and the Federal labor laws seem neither (a) to prohibit injunctive relief unless some relief is demanded of the Petitioner, Railway Company, in the labor dispute, or (b) unless the Railway Company is a party to the labor dispute, such as would give the National Labor Relations Board exclusive jurisdiction of the matter under the Taft-Hartley labor relations acts of the Congress. (62 Stat. 991, U.S.C.A. Sup. 160 (a).

STATUTES INVOLVED

(1) Duty of common carriers to furnish service, 41 Stat. 474-479 (49 USCA Sec. 1). Appendix page. VII.

(2) Labor Law Restrictions on Injunctive Relief in Federal Courts, 38 Stat. 738 (29 USCA Sec. 52), 47 Stat. 70 USCA Sections 101, 104, 107), 49 Stat. 449-450, 452, 453, 1921 (29 USCA Sections 151, 152, 157, 158). Appendix pages X, etc..

(3) Jurisdiction and powers of National Labor Relations Board 49 Stat. 453 and 1921 (29 USCA Section 160). Appendix page XXI.

FACT STATEMENT

A labor dispute has existed for upwards of two years between respondents and the Foley's Mill located on the railroad of Petitioner Great Northern Railway Company in the City of Helena, Montana. In that labor dispute no relief or claim or demand is made by the labor union against petitioner, Railway Co.

By its service Order No. 904, issued July 7, 1955, the Interstate Commerce Commission required the petitioner, Railway Company to place loaded cars and remove empty cars between its yards and shippers served from that yard on a 24-hour schedule, subject to penalties for failure, and this action was brought in the District Court, by reason of said order and generally under the statutory requirements that interstate rail carriers serve the public without discrimination, with penalties for discrimination.

In variably as petitioner undertakes to remove or spot freight cars from or to the Foley's Mill, respondents have maintained a picket line by close formation on petitioner's railroad as that railroad leading to the Foley's Mill crosses Roberts Street. Petitioner's switch crew refuses to cross that picket line, with result that once or twice a week for the past several years petitioner has been required to bring the 95miles from Great Falls, Montana, to Helena, Montana, three of its supervisory officials to do the switching of interstate property to and from the Foley's Mill. On arrival of the substitute

switch crew at Helena, the local police are called up, and the police respond, remove the pickets and the substitute switch crew furnishes the rail service to the Foley's Mill.

Since January 1, 1954, there have been upwards of 152 such cars to be handled at an added cost of 165 man days and a money cost of upwards of $5,500 to petitioner.

For its failure to serve a shipper, and for its failure to comply with said order, petitioner is subject to penalties up to $500 for each offense, plus $50 per day of delay, 41 Stat. 474-489 (49 USCA Sec. 1 (17).

Contrary to the holding in the Court below, the record discloses that petitioner has not been and is not now, by means of such substitute crews of advisory officials, able to furnish regular service to the struck plant, but by reason of the fact that such substitute crews are located only at Great Falls, Montana, some 95 miles away, and are few in numbers, petitioner is only able to furnish rail service to the struck plant once or twice a week, instead of the daily service required by law, and for these delays, is subject to continuing damage claims by the shipper and to statutory penalties for so discriminating against this particular shipper.

Respondents threaten to continue the picketing in future.

Federal Court Jurisdiction is given to enforce any order of the Interstate Commerce Commission 62 Stat. 931 (28 USCA Sections 1336, 1337).

ARGUMENT

Petitioner, Railway Company, would seem to be entitled to injunctive relief by its action brought directly in the Federal District Court to remove the Union pickets from its railroad, (a) to protect its property right to do business as a common carrier, and (b) to enable it to comply with its duty and avoid the penalties under the Federal Interstate Commerce Acts of Congress to serve all the public, including the struck plant, unless the Federal labor laws have changed the rule held in Dorchy v. Kansas, 272 U.S. 306, 71 L. Ed. 248. Petitioner, Railway Company, would not seem to have forfeited that right to injunctive relief by its delay in bringing this action, petitioner expecting the strike at the Foley's Mill might be settled in the meantime; or, stated differently, the right of the Labor Union, respondents, to commit the wrong, may not be acquired by prescription.

Since the passage of the Norris-LaGuardia Act the Federal District Courts in seven different states, and the courts of last resort in three states have held for the right of the rail carrier to injunctive relief against pickets under fact situations such as we have here, and the holdings in those ten cases are in conflict with the holding in this case in the United States Court of Appeals for the Ninth Circuit.

Erie R. Co. v. Local 1286 of Longshoremen, etc. (N.Y.) 117 F. Sup. 157.

Pacific Gamble Robinson Co. v. M. & St. L. Ry. (Minn.) 85 F. Sup. 65.

Illinois C. R. Co. v. International Brotherhood of Teamsters (La.) 90 F. Sup. 640.

Louisville & N. R. Co. v. Local Union, etc. Woodworkers, etc. (Ala.) 104 F. Sup. 748.

Montgomery Ward, etc. v. Northern Pac. Terminal Co. (Ore.) 127 F. Sup. 475.

Southern Pacific v. Cannery Warehouse (Ore.) 127 F Sup. 703.

Hunt v. Crumbock (Pa.) 44 F. Sup 796.

Northwestern Pac. R. Co. v. Lumber & Sawmill Workers Union (Calif.) 189 P. (2) 227.

Burlington Transpn. Co. v. Hathaway (Iowa) 12 NW (2d) 167.

General Drivers, etc. Union v. American Tobacco Co. (Ky.) 264 S.W. (2d) 250.

Because of the conflict in the decided cases, the question should be settled in this Court, as to whether or not, (a) the rail carrier is entitled to injunctive relief in the courts against picketing, and (b) if not, is that because the presence of the pickets relieve the carrier of its obligation to serve the struck plant and from the statutory penalties for failbure to serve the struck plant; or (c) is that because the facts here disclose a "labor dispute" over which the National Labor Relations Board has jurisdiction?

Wherefore your petitioner respectfully prays that a Writ of Certiorari be issued out and under the seal of this Court, directed to the United States

Court of Appeals for the Ninth Circuit, commanding the said Court to certify and send to this Court on a day certain to be therein designated, a full and complete transcript of the record and all proceedings of the United States Court of Appeals for the Ninth Circuit in the case therein entitled, No. 14934.

Great Northern Railway Company, a corporation, Appellant.

vs.

Lumber od Sawmill Workers, Local Union No. 2409, a voluntary Association and Labor Union, Helen M. Bouchey, Individually and as President of said Labor Union, Doris M. Traynor, individually and as recording secretary of said Labor Union, Ray F. Lindberg, individually and as Financial Secretary of sand Labor Union, Leona L. Stein and Joseph S. Bogard, Appellees.

To the end that said case may be reviewed and determined by this court, as provided in 62 Stat. 928 (28 USCA 1254), providing for review on Writ of Certertori of decisions of United States Courts of Appeals; and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate, and in conformity to said act; and that the judgment of the United States Court of Appeals for the

Ninth Circuit in said case and every part thereof may be reversed with directions by this Honorable Court, and so your petitioner will ever pray.

Great Northern Railway Company,
a corporation.

By Taylor B. Weir, Attorney for Petitioner (Address: 301 First National Bank Building, Helena, Montana).

Edwin C. Matthias,
Hallan Huffman,
Newell Gough, Jr.,
of Counsel.

Due personal service of foregoing petition and supporting brief in above matter admitted this ..... day of ....., 1956.

Attorney for Respondents
(Address: Helena, Montana)

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Great Northern Railway Company,
a corporation,

Appellant,

vs.

Lumber and Sawmill Workers,
Local No. 2409, a Voluntary Association
and Labor Union; etal.,

Appellees.

No. 14,934
April 18, 1956

Appeal from the United States
District Court
for the
District of Montana

Before: STEPHENS and BONE, Circuit Judges;
and GOODMAN, District Judge.

LOUIS E. GOODMAN, District Judge.

The District Court, on motion of defendant below (appellee here) dismissed plaintiff's (appellant's) cause of action for a permanent and temporary injunction restraining appellee from picketing on or about appellant's railroad right-of-way and from delaying or interfering with appellant's delivery of freight to a Mill, with which appellee was engaged in a labor dispute.

District Judge Murray, in his opinion below, ... Fed. Supp. ....., has set out adequate and

compelling legal reasons why the complaint failed to tender sufficient legal grounds for injunctive relief. Upon his opinion, the judgment below should be affirmed.

Appellant has urged us, nevertheless, to reverse upon the broad ground that appellant is entitled to injunctive relief to enable it to comply with its obligations to furnish interstate railway service to all the public (49 USC 1 (17)) including shippers involved in labor disputes. The resolution of such an issue necessarly involves the application of the Norris-LaGuardia Act, 29 USC 104-113 and the Labor Management Relations Act 29 USC 104-113 and the Labor Management Relations Act 29 USC 141 et seq.

The District Court felt it unnecessary, as we do, to reach this question. For the facts of this case, as alleged in the complaint, and, deemed true for the purpose of the motion to dismiss, do not present a cause of equitable relief under well recognized legal doctrine. The acts of appellee complained of have been continuing since January 1, 1954. The complaint was not filed until September 14, 1955. So the appellant was allegedly suffering under a burden for twenty months before suit, a burden which, suddenly, after that long period of time, blossomed into a claimed need for immediate drastic remedy. Furhermore, it appeared that the extent of the hindrance to appellant was merely that it had to use otler than regular employees to deliver the freight—a detriment easily and admit-

tedly compensable in dollars. Indeed the allegations of the complaint affirmatively show that the appellant in fact was not prevented from making any deliveries of freight.

Under these circumstances, to reach and rule upon the broad question tendered by appellant would amount to the issuance of an advisory opinion. This is a "consummation" devoutly to be avoided, for that is the way bad law is made.

Affirmed.

(Endorsed:) Opinion. Filed April 18, 1956.
Paul P. O'Brien, Clerk.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Great Northern Railway Company,
a corporation,

Appellant,

vs.

Lumber and Sawmill Workers, Local Union No. 2409, Voluntary Association and Labor Union; et al.,

Appellees.

JUDGMENT

Appeal from the United States District Court for the District of Montana.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the District of Montana, and was duly submitted.

On consideration whereof, it is now here ordered and adjudged by this court, that the Order of the said District Court in this cause be, and hereby is affirmed.

(ENDORSED) Judgment
Filed and Entered: April 18, 1956.
PAUL P. O'BRIEN, Clerk.

— VII —

DUTY OF CARRIER TO FURNISH SERVICE—PENALTIES

(4) *Duty to furnish transportation and establish through routes; division of joint rates.* It shall be the duty of every common carrier subject to this chapter engaged in the transportation of passengers or property to provide and furnish such transportation upon reasonable request therefor, and to establish through routes and just and reasonable rates, fares, and charges applicable thereto, and to provide reasonable facilities for operating through routes and to make reasonable rules and regulations with respect to the operation of through routes, and providing for reasonable compensation to those entitled thereto; and in case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers subject to this chapter participating therein which shall not unduly prefer or prejudice any of such participating carriers. (41 Stat. 474-479, 49 USCA 1 (4).)

(8) *Liability in damages to persons injured by violation of law.* In case any common carrier subject to the provisions of this chapter shall do, cause to be done, or permit to be done any act, matter, or thing in this chapter prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this chapter required to be done, such common carrier shall be liable to the person or persons injured thereby for the full amount of damages sustained in consequence of any such violation of the provisions of this chapter, together with a

reasonable counsel or attorney's fee, to be fixed by the court in every case of recovery, which attorney's fee shall be taxed and collected as part of the costs in the case. (20 Stat. 49 USCA Sec. 8.)

(10) *Violation of regulations by carriers; discrimination; penalties.* (1) *Violation by carrier or officer; penalty.* Any common carrier subject to the provisions of this chapter, or, whenever such common carrier is a corporation, any director or officer thereof, or any receiver, trustee, lessee, agent, or person acting for or employed by such corporation, who, alone or with any other corporation, company, person, or party, shall willfully do or cause to be done, or shall willingly suffer or permit to be done, any act, matter, or thing in this chapter prohibited or declared to be unlawful, or who shall aid or abet therein, or shall wilfully omit or fail to do any act, matter, or thing in this chapter required to be done, or shall cause or willingly suffor or permit any act, matter, or thing so directed or required by this chapter to be done not to be so done, or shall aid or abet any such omission or failure, or shall be guilty of any infraction of this chapter for which no penalty is otherwise provided, or who shall aid or abet therein, shall be deemed guilty of a misdemeanor, and shall, upon conviction thereof in any district court of the United States within the jurisdiction of which such offense was committed, be subject to a fine of not to exceed $5,000 for each offense: PROVIDED, That is the offense for which any person shall be convicted as aforesaid shall be

an unlawful discrimination in rates, fares, or charges for the transportation of passengers or property or the transmission of intelligence, such person shall, in addition to the fine hereinbefore provided for, be liable to imprisonment in the penitentiary for a term of not exceeding two years, or both such fine and imprisonment, in the discretion of the court. (41 Stat. 483, 49 USCA Sec. 10 (1).)

— X —

LABOR LAWS

52. STATUTORY RESTRICTION OF INJUNCTIVE RELIEF

No restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employee, or between employers and employees, or between employees, , or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

And no such restraining order or injunction shall prohibit any person or persons, whether singly or in concert, from terminating any relation of employment, or from ceasing to perform any work or labor, or from recommending, advbising, or persuading others by peaceful means so to do; or from attending at any place where any such person or persons may lawfully be, for the purpose of peacefully obtaining or communicating information, or from peacefully persuading any person to work or to abstain from working; or from ceasing to patronize or to employ any party to such dispute, or from recommending, advising, or persuading others by peaceful and law-

ful means so to do; or from paying or giving to, or withholding from, any person engaged in such dispute, any strike benefits or other moneys or things of value; or from peaceably assembling in a lawful manner, and for lawful purposes; or from doing any act or thing which might lawfully be done in the absence of such dispute by any party thereto; nor shall any of the acts specified in this paragraph be considered or held to be violations of any law of the United States. 38 Stat. 738, 29 USCA, Stat. 52.

101. ISSUANCE OF RESTRAINING ORDERS AND INJUNCTIONS; LIMITATION; PUBLIC POLICY

No court of the United States, as defined in sections 101-115 of this title, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of such sections; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in such sections. 49, Stat. 70, 29 USCA, Sec. 101.

104. ENUMERATION OF SPECIFIC ACTS NOT SUBJECT TO RESTRAINING ORDERS OR INJUNCTIONS

No court of the United States shall have jurisdiction to issue any restraining order or temporary or permanent injunction in any case involving or growing out of any labor dispute to prohibit any

person or persons participating or interested in such dispute (as these terms are herein defined) from doing, whether singly or in concert, any of the following acts:

(a) Ceasing or refusing to perform any work or to remain in any relation of employment;

(b) Becoming or remaining a member of any labor organization or of any employer organization, regardless of any such undertaking or promise as is described in section 103 of this title;

(c) Paying or giving to, or withholding from, any person participating or interested in such labor dispute, any strike or unemployment benefits or insurance, or other moneys or things of value;

(d) By all lawful means aiding any person participating or interested in any labor dispute who is being proceeded against in, or is prosecuting, any action or suit in any court of the United States or of any State;

(e) Giving publicity to the existence of, or the facts involved in, any labor dispute, whether by advertising, speaking, patrolling, or by any other method not involving fraud or violence;

(f) Assembling peaceably to act or to organize to act in promotion of their interests in a labor dispute;

(g) Advising or notifying any person of an intention to do any of the acts heretofore specified;

(h) Agreeing with other persons to do or not to do any of the acts heretofore specified; and

(i) Advising, urging, or otherwise causing or

inducing without fraud or violence the acts heretofore specified, regardless of any such undertaking or promise as is described in section 103 of this title. 47 Stat. 70, 29 USCA, Sec. 104.

107. ISSUANCE OF INJUNCTIONS IN LABOR DISPUTES; HEARINGS; FINDINGS OF COURT; NOTICE TO AFFECTED PERSONS; TEMPORARY RESTRAINING ORDER; UNDERTAKINGS

No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as defined in sections 101-115 of this title, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to thet effect . . .

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complaintant's property will follow;

(c) That as to each item of relef granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection.

Such hearing shall be held after due and personal notice thereof has been given, in such manner as the court shall direct, to all known persons against whom relief is sought, and also to the chief of those public officials of the county and city within which the unlawful acts have been threatened or committed charged with the duty to protect complainant's property: PROVIDED, HOWEVER, That if a complainant shall also allege that, unless a temporary restraining order shall be issued without notice, a substantial and irreparable injury to complainant's property will be unavoidable, such a temporary restraining order shall be effective for no longer than five days and shall become void at the expiration of said five days. No temporary restraining order or temporary injunction shall be issued except on condition that complainant shall first file an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense those enjoined for any loss, expense, or damage

caused by the improvident or erroneous issuance of such order or injunction, including all reasonable costs (together with a reasonable attorney's fee) and expense of defense against the order or against the granting of any injunctive relief sought in the same proceeding and subsequently denied by the court.

The undertaking mentioned in this secoion shall be understood to signify an agreement entered into by the complainant and the surety upon which a decree may be rendered in the same suit or proceeding against said complainant and surety, upon a hearing to assess damages of which hearing complainant and surety shall have reasonable notice, the said complainant and surety submitting themselves to the jurisdiction of the court for that purpose. But nothing in this section contained shall deprive any party having a claim or cause of action under or upon such undertaking from electing to pursue his ordinary remedy by suit at law or in equity. 47 Stat. 71, 629 USCA, Sec. 107.

151. FINDINGS AND DECLARATION OF POLICY

The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intert or the necessary effect of burdening or obscurng commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of

commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, o rthe prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is declared to be the policy of the United States

to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection. 49 Stat. 449, 29 USCA, Sec. 151.

152. DEFINITIONS

When used in sections 151-166 of this title—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, ruptcy, or receivers.
legal representatives, trustees, trustees in bank-

(2) The term "employer" includes any person acting in the interest of an employer, directly or individually, but shall not include the United States, or any State or political subdivision thereof, or any person subject to sections 151-163 of Title 45, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee' shall include any employee, and shall not be limited to the employees of a particular employer, unless the chapter explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or be-

cause of any unfair labor practices, and who has not obtained any other regular and substantially equivalent employnent, but shall not include any individual employel as an agricultural laborer, or in the domestic service of any family or person at his home, or any iidividul employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term 'labor organization" means any organization of anykind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or ir part, of dealing with employers concerning grievances, labor disputes, wages, rates o fpay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Coilumbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term 'affecting commerce" means in commerce, or burlening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or tle free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 158 of this title.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employerd and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 153 of this title.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934, (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133 approved June 14, 1935. 49 Stat. 450, 29 USCA, Sec. 152.

157. RIGHT OF EMPLOYEES AS TO ORGANIZATION, COLLECTIVE BARGAINING, ETC.

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their

own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection. 49 Stat. 452, 29 USCA, Sec. 157.

160. PREVENTION OF UNFAIR LABOR PRACTICES—POWERS OF BOARD GENERALLY

(a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 158) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise. 29 USCA, Sec. 160(a).

No. 14934

AUG 10
JOHN T. FEY,

In the Supreme Court of the United States

October Term, 1956

GREAT NORTHERN RAILWAY COMPANY, a corporation,

Appellant,

vs.

LUMBER AND SAWMILL WORKERS, LOCAL UNION NO. 2409, A VOLUNTARY ASSOCIATION AND LABOR UNION, HELEN M. BOUCHEY, INDIVIDUALLY AND AS PRESIDENT OF SAID LABOR UNION, DORIS M. TRAYNOR, INDIVIDUALLY AND AS SECRETARY OF SAID LABOR UNION, RAY F. LINDBERG, INDIVIDUALLY AND AS FINANCIAL SECRETARY OF SAID LABOR UNION, LEONA L. STEIN AND JOSEPH S. BOGARD,

Appellees.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

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BRIEF FOR LUMBER AND SAWMILL WORKERS, LOCAL UNION NO. 2409, A VOLUNTARY ASSOCIATION AND LABOR UNION, HELEN M. BOUCHEY, INDIVIDUALLY AND AS PRESIDENT OF SAID LABOR UNION, DORIS M. TRAINOR, INDIVIDUALLY AND AS SECRETARY OF SAID LABOR UNION, RAY F. LINDBERG, INDIVIDUALLY AND AS FINANCIAL SECRETARY OF SAID LABOR UNION, LEONA L. STEIN AND JOSEPH S. BOGARD.

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CASES CITED

Local Union No. 25 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, vs. The New York, New Haven and Hartford Railroad Company, 76 S. Ct. 227,____ U. S.____ 4

STATUTES

Section 93-4204, R. C. M., 1947 2

No. 14934

In the Supreme Court of the United States

October Term, 1956

GREAT NORTHERN RAILWAY COMPANY, a corporation,

Appellant,

vs.

LUMBER AND SAWMILL WORKERS, LOCAL UNION NO. 2409, A VOLUNTARY ASSOCIATION AND LABOR UNION, HELEN M. BOUCHEY, INDIVIDUALLY AND AS PRESIDENT OF SAID LABOR UNION, DORIS M. TRAYNOR, INDIVIDUALLY AND AS SECRETARY OF SAID LABOR UNION, RAY F. LINDBERG, INDIVIDUALLY AND AS FINANCIAL SECRETARY OF SAID LABOR UNION, LEONA L. STEIN AND JOSEPH S. BOGARD,

Appellees.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is reported at *232 Fed. (2d) 358.*

JURISDICTION

The judgment of the Court of Appeals was entered on April 18, 1956. Jurisdiction is invoked by petitioner under *28 U. S. C. 1254.*

QUESTIONS PRESENTED

Whether the complaint tendered sufficient legal grounds to warrant injunctive relief against the picketing involved.

STATUTES INVOLVED

The statutes involved are as set forth in the petition, page 3, and Appendix VII through XXI and in addition, *Section 93-4204,* Revised Codes of Montana, 1947, reading:

> "Injunction order—when granted. An injunction order may be granted in the following cases:
>
> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually;
>
> 2. When it shall appear by the complaint or affidavit that the commission or continuance of some act during the litigation would produce a great or irreparable injury to the plaintiff;

3. When it shall appear during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual;

4. When it appears by affidavit that the defendant during the pendency of the action, threatens, or is about to remove or to dispose of his property, with intent to defraud the plaintiff, an injunction order may be granted to restrain the removal or disposition."

STATEMENT

The complaint alleges that defendants have picketed a mill and cabinet works at Helena, Montana, which the plaintiff railroad serves and that as a result:

". . . plaintiff's one switch crew located at Helena, Montana, because of their union obligations, have invariably refused to spot cars billed to and receive cars billed by said Foley's Mill and Cabinet Works* * *." (R. 7).

It then affirmatively appears by way of allegation, that the City Police of Helena, Montana are called to remove the picketers from plaintiff's railroad tracks, which they do. (R. 8). Monetary loss to the petitioner is stated, (R. 9), as well as delay in handling shipments. (R. 10). To the complaint, a motion to dismiss was tendered. (R. 17). The District Court, (R. 18), and the Court of Appeals, (Petition, Appendix III), found the complaint presented no case for

equitable relief under the ordinary rules applicable to the granting of injunctive relief.

ARGUMENT

The record in this cause does not present a situation that would move the discretion of this Court to grant the writ under any of the categories indicated in Section 5 of Rule 38 of this Court.

The allegations of the complaint establish that the refusal of the switch crews to cross the picket line comes about solely by reason of the switch crews own union obligation, (R. 7), and not by reason of any unlawful acts of the defendants.

Further, the complaint shows no grounds for injunctive relief even under the broad general rules as found by the Court of Appeals.

The District Court had no jurisdiction in any event to grant any relief. Jurisdiction was in the National Labor Relations Board under the allegations of the complaint, as determined by the Court in Local Union No. 25 of International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America v. The New York, New Haven and Hartford Railroad Company, 76 S. Ct. 227, U. S. That decision is controlling.

As to the irreconcilable conflict seen by petitioner between the provisions of the Commerce Act, the Norris LaGuardia Act and Labor Management Relations Act, the facts as al-

leged do not make necessary the resolution of that conflict in this proceeding. As stated by the Court of Appeals, petitioner is really seeking an advisory opinion to guide it in cases that may arise in the future where the conflict might exist.

We respectfully urge that the petition should be denied.

Dated this 27th day of July, 1956.

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